

112TH CONGRESS
2D SESSION

H. R. 5948

To amend title 38, United States Code, to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2012

Mr. JOHNSON of Ohio introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Fiduciary

5 Reform Act of 2012”.

6 **SEC. 2. IMPROVEMENT OF FIDUCIARIES FOR VETERANS.**

7 (a) INCOMPETENCY.—

1 (1) IN GENERAL.—Chapter 55 of title 38,
2 United States Code, is amended by adding at the
3 end the following new section:

4 **“§ 5511. Adjudication of financial incompetence”**

5 “(a) DETERMINATION.—In any case arising out of
6 the administration by the Secretary of laws and benefits
7 under this title in which the Secretary must determine
8 whether an individual requires a fiduciary, the Secretary
9 shall consider the following factors when adjudicating
10 whether an individual is considered mentally incapacitated
11 or deemed mentally incompetent:

12 “(1) A determination made by a State court or
13 other court of competent jurisdiction.

14 “(2) An evaluation made by a medical profes-
15 sional, taking into account the role of financial man-
16 agement in the rehabilitation of the individual.

17 “(b) APPEALS.—(1) An individual whom the Sec-
18 retary has determined to be mentally incapacitated or
19 deemed mentally incompetent may appeal such determina-
20 tion.

21 “(2) In hearing an appeal under paragraph (1), the
22 Secretary shall consider court determinations, medical evi-
23 dence, and lay evidence offered by the appellant.

24 “(c) REMOVAL OF FIDUCIARY.—(1) An individual de-
25 scribed in paragraph (2) may file a claim with the Sec-

1 retary to terminate any fiduciary relationship established
2 under this chapter.

3 “(2) An individual described in this paragraph is an
4 individual—

5 “(A) whom the Secretary determined to be
6 mentally incapacitated or mentally incompetent
7 under subsection (a);

8 “(B) for whom the Secretary appointed a fidu-
9 ciary under this chapter; and

10 “(C) whom, after such appointment, a State
11 court or other court of competent jurisdiction or a
12 medical professional has determined to be com-
13 petent.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions at the beginning of such chapter 55 is amend-
16 ed by adding at the end the following new item:

“5511. Adjudication of financial incompetence.”.

17 (b) DEFINITION OF FIDUCIARY.—Section 5506 of
18 title 38, United States Code is amended—

19 (1) by striking “For purposes” and inserting
20 “(a) For purposes”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(b)(1) For purposes of subsection (a), the term ‘per-
24 son’ includes any—

1 “(A) State or local government agency whose
2 mission is to carry out income maintenance, social
3 service, or health care-related activities;

4 “(B) any State or local government agency with
5 fiduciary responsibilities; or

6 “(C) any nonprofit social service agency that
7 the Secretary determines—

8 “(i) regularly provides services as a fidu-
9 ciary concurrently to five or more individuals;
10 and

11 “(ii) is not a creditor of any such indi-
12 vidual.

13 “(2) The Secretary shall maintain a list of State or
14 local agencies and nonprofit social service agencies under
15 paragraph (1) that are qualified to act as a fiduciary
16 under this chapter.”.

17 (c) **QUALIFICATION.**—Section 5507 of title 38,
18 United States Code, is amended—

19 (1) in subsection (a)—

20 (A) in paragraph (1)(B), by striking “to
21 the extent practicable, to include” and inserting
22 “including, in accordance with subsection
23 (e)(1)(A),”;

24 (B) in paragraph (2), by striking “and”;

(C) by redesignating paragraph (3) as paragraph (4);

(D) by adding after paragraph (2) the following new paragraph (3):

5 “(3) adequate evidence that the person to serve
6 as fiduciary uses a secure, encrypted Internet con-
7 nection when conducting activity on the Internet re-
8 lating to the financial information of the beneficiary
9 in accordance with subsection (f); and”; and

10 (E) in paragraph (4), as so redesignated,
11 by inserting “, in accordance with subsection
12 (i)” before the period at the end;

15 (3) in subsection (c)—

23 (B) in paragraph (2)—

5 “(E) a person who is authorized to act on be-
6 half of the beneficiary under a durable power of at-
7 torney.”; and

(4) by adding at the end the following new sub-sections:

10 “(e)(1) In conducting an inquiry or investigation of
11 a proposed fiduciary under subsection (a)(1), the Sec-
12 retary shall conduct—

13 “(A) the face-to-face interview with the pro-
14 posed fiduciary by not later than 30 days after the
15 date on which such inquiry or investigation begins;
16 and

17 “(B) a background check of the proposed fidu-
18 ciary to—

“(i) in accordance with subsection (b), determine whether the proposed fiduciary has been convicted of a crime; and

22 “(ii) determine whether the proposed fidu-
23 ciary will serve the best interest of the bene-
24 ficiary, including by conducting a credit check
25 of the proposed fiduciary.

1 “(2) The Secretary shall conduct the background
2 check described in paragraph (1)(B)—

3 “(A) each time a person is proposed to be a fi-
4 duciary, regardless of whether the person is serving
5 or has served as a fiduciary; and

6 “(B) at no expense to the beneficiary.

7 “(3) Each proposed fiduciary shall disclose to the
8 Secretary the number of beneficiaries that the fiduciary
9 acts on behalf of.

10 “(4)(A) The Secretary shall maintain records of any
11 person who has—

12 “(i) previously served as a fiduciary; and

13 “(ii) had such fiduciary status revoked by the
14 Secretary.

15 “(B) In conducting the background check described
16 in paragraph (1)(B), the Secretary shall check the records
17 maintained under subparagraph (A).

18 “(C) If a fiduciary appointed by the Secretary is con-
19 victed of any crime while serving as a fiduciary for any
20 person, the Secretary shall notify the beneficiary by not
21 later than 14 days after the date on which the Secretary
22 learns of such conviction.

23 “(f) The Secretary shall ensure that each fiduciary
24 has adequate training and knowledge to effectively use an
25 encrypted, secure Internet connection when conducting ac-

1 tivity relating to the financial information of the bene-
2 ficiary.

3 “(g)(1) If the Secretary has reason to believe that
4 a fiduciary may be misusing all or part of the benefit of
5 a beneficiary, the Secretary shall—

6 “(A) conduct a thorough investigation to deter-
7 mine the veracity of such belief; and

8 “(B) if such veracity is established, transmit to
9 the officials described in paragraph (2) a report of
10 such investigation.

11 “(2) The officials described in this paragraph are the
12 following:

13 “(A) The Attorney General.

14 “(B) Each head of a Federal department or
15 agency that pays to a fiduciary or other person ben-
16 efits under any law administered by such depart-
17 ment or agency for the use and benefit of a minor,
18 incompetent, or other beneficiary.

19 “(h)(1) Except as provided by paragraph (2), the
20 Secretary may require that a proposed fiduciary only serve
21 as a fiduciary for a beneficiary with respect to benefits
22 paid under laws administered by the Secretary.

23 “(2) Paragraph (1) shall not apply to a proposed fi-
24 duciary who is—

25 “(A) a family member of the beneficiary; or

1 “(B) the individual predesignated by the bene-
2 ficiary to serve as the fiduciary pursuant to section
3 5506A of this title.

4 “(i) In requiring the furnishing of a bond under sub-
5 section (a)(4), the Secretary shall—

6 “(1) ensure that any such bond is not paid
7 using any funds of the beneficiary; and

8 “(2) consider—

9 “(A) the care a proposed fiduciary has
10 taken to protect the interests of the beneficiary;
11 and

12 “(B) the capacity of the proposed fiduciary
13 to meet the financial requirements of the bond
14 without sustaining hardship.

15 “(j) A fiduciary appointed by the Secretary shall op-
16 erate independently of the Department to determine the
17 actions that are in the interest of the beneficiary.

18 “(k) Each regional office of the Veterans Benefits
19 Administration shall maintain a list of the following:

20 “(1) The name and contact information of each
21 fiduciary, including address, telephone number, and
22 email address.

23 “(2) With respect to each fiduciary described in
24 paragraph (1)—

1 “(A) the date of the most recent back-
2 ground check and credit check performed by the
3 Secretary under this section;

4 “(B) the date that any bond was paid
5 under this section;

6 “(C) the name, address, and telephone
7 number of each beneficiary the fiduciary acts on
8 behalf of; and

9 “(D) the amount that the fiduciary con-
10 trols with respect to each beneficiary described
11 in subparagraph (C).”.

12 (d) DESIGNATION OF FIDUCIARY.—

13 (1) IN GENERAL.—Chapter 55 of title 38,
14 United States Code, is amended by inserting after
15 section 5506 the following new sections:

16 **“§ 5506A. Predesignation of fiduciary**

17 “(a) APPLICATION FOR COMPENSATION.—(1) The
18 Secretary shall include in the form described in paragraph
19 (2) the following:

20 “(A) An opportunity for the individual submit-
21 ting the form to designate an individual, including a
22 spouse or other family member of the individual, to
23 serve as a fiduciary in the event a fiduciary is need-
24 ed.

1 “(B) A description of what a fiduciary is and
2 the role served by the fiduciary.

3 “(C) A description of the actions to be taken by
4 the Secretary in the event a fiduciary is not des-
5 ignated by the individual.

6 “(2) The form described in this paragraph is a form
7 that the Secretary requires an individual to submit for a
8 claim for compensation or a pension administered under
9 this title, including Form 21-526 or any successor form.

10 “(3) The information included under paragraph (1)
11 shall be provided in a manner that is conspicuous, easy
12 to read, and without the use of technical or legal terms,
13 other than the term ‘fiduciary’.

14 “(b) PRIORITY OF APPOINTMENT.—In appointing a
15 fiduciary under this chapter, if a beneficiary does not des-
16 ignate a fiduciary pursuant to subsection (a), to the extent
17 possible the Secretary shall appoint a person who is—

18 “(1) appointed as guardian of the beneficiary
19 by a court of competent jurisdiction; or

20 “(2) authorized to act on behalf of the bene-
21 ficiary under a durable power of attorney.

22 “(c) APPOINTMENT OF NON-PREDESIGNATED FIDU-
23 CIARY.—If a beneficiary designates an individual to serve
24 as a fiduciary under subsection (a)(1)(A) and the Sec-
25 retary appoints an individual not so designated as the fi-

1 duciary for such beneficiary, the Secretary shall notify
2 such beneficiary of—

3 “(1) the reason why such designated individual
4 was not appointed; and
5 “(2) the ability of the beneficiary to file a claim
6 under section 5506B of this title to modify the ap-
7 pointed fiduciary.

8 **“§ 5506B. Modification of appointed fiduciary”**

9 “(a) IN GENERAL.—A beneficiary for whom the Sec-
10 retary appoints a fiduciary under this chapter may, at any
11 time, file a claim with the Secretary to—

12 “(1) remove the fiduciary so appointed; and
13 “(2) have a new fiduciary appointed.

14 “(b) CONTINUATION OF BENEFITS.—The Secretary
15 shall ensure that any removal or new appointment of a
16 fiduciary under subsection (a) does not delay or interrupt
17 the beneficiary’s receipt of benefits administered by the
18 Secretary.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions at the beginning of such chapter is amended
21 by inserting after the item relating to section 5506
22 the following new items:

“5506A. Predesignation of fiduciary.
“5506B. Modification of appointed fiduciary.”.

23 (e) FEE.—Subsection (a)(2) of section 5502 of title
24 38, United States Code, is amended to read as follows:

1 “(2)(A) In a case in which the Secretary determines
2 that a commission is necessary in order to obtain the serv-
3 ices of a fiduciary in the best interests of a beneficiary,
4 the Secretary may authorize a fiduciary appointed by the
5 Secretary to obtain from the monthly benefits provided to
6 the beneficiary a reasonable commission for fiduciary serv-
7 ices rendered, but the commission for any month may not
8 exceed the lesser of the following amounts:

9 “(i) The amount that equals three percent of
10 the monthly monetary benefits under laws adminis-
11 tered by the Secretary paid on behalf of the bene-
12 ficiary to the fiduciary.

13 “(ii) \$35.

14 “(B) A commission paid under this paragraph may
15 not be derived from any award to a beneficiary regarding
16 back pay or retroactive benefits payments.

17 “(C) A commission may not be authorized for a fidu-
18 ciary who receives any other form of remuneration or pay-
19 ment in connection with rendering fiduciary services for
20 benefits under this title on behalf of the beneficiary.

21 “(D) In accordance with section 6106 of this title,
22 a commission may not be paid to a fiduciary if the Sec-
23 retary determines that the fiduciary misused any benefit
24 payments of a beneficiary.

1 “(E) If the Secretary determines that the fiduciary
2 has misused any benefit or payments of a beneficiary, the
3 Secretary may revoke the fiduciary status of the fidu-
4 ciary.”.

5 (f) REPAYMENT OF MISUSED BENEFITS.—Section
6 6107(a)(2)(C) of title 38, United States Code, is amended
7 by inserting before the period the following: “, including
8 by the Secretary not acting in accordance with section
9 5507 of this title”.

10 (g) ANNUAL RECEIPT OF PAYMENTS.—Section 5509
11 of title 38, United States Code, is amended—

12 (1) in subsection (a)—

13 (A) by striking “may require a fiduciary to
14 file a” and inserting “shall require a fiduciary
15 to file an annual”; and

16 (B) by adding at the end the following new
17 sentence: “The Secretary shall transmit such
18 annual report or accounting to the beneficiary
19 and any legal guardian of such beneficiary.”;
20 and

21 (2) by adding at the end the following new sub-
22 section:

23 “(c) MATTERS INCLUDED.—An annual report or ac-
24 counting under subsection (a) shall include, for each bene-
25 ficiary that a fiduciary acts on behalf of—

1 “(1) the amount of the benefits of the bene-
2 ficiary accrued during the year, the amount spent,
3 and the amount remaining; and

4 “(2) if the fiduciary serves the beneficiary with
5 respect to benefits not administered by the Sec-
6 retary, an accounting of all sources of benefits or
7 other income the fiduciary oversees for the bene-
8 ficiary.”.

9 (h) ANNUAL REPORTS.—Section 5510 of title 38,
10 United States Code, is amended by striking “The Sec-
11 retary shall include in the Annual Benefits Report of the
12 Veterans Benefits Administration or the Secretary’s An-
13 nual Performance and Accountability Report” and insert-
14 ing “Not later than July 1 of each year, the Secretary
15 shall submit to the Committees on Veterans’ Affairs of
16 the House of Representatives and the Senate a separate
17 report containing”.

18 (i) REPORT.—Not later than one year after the date
19 of the enactment of this Act, the Secretary of Veterans
20 Affairs shall submit to the Committee on Veterans’ Affairs
21 of the Senate and the Committee on Veterans’ Affairs of
22 the House of Representatives a comprehensive report on
23 the implementation of the amendments made by this Act,
24 including detailed information on the establishment of new

- 1 policies and procedures pursuant to such amendments and
- 2 training provided on such policies and procedures.

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